

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the matter of)	
MINNESOTA PCS LIMITED)	
PARTNERSHIP (Assignor))	File No. 0000525838
K-25 WIRELESS, L.P. (Assignee))	
)	
BRK WIRELESS COMPANY, INC.)	File Nos. 0000479140,
(Assignor))	0000480125
Y-12 WIRELESS, L.P. (Assignee))	
)	
AMICA WIRELESS PHONE SERVICE,)	File No. 0000483023
INC. (Assignor))	
Y-12 WIRELESS, L.P. (Assignee))	
)	
AMERICAN WIRELESS LICENSE)	File No. 0000494420
GROUP, LLC (Assignor))	
X-10 WIRELESS, L.P. (Assignee))	
)	
Applications for Assignment of Stations)	
KNLG954, WPOJ704, KNLG649,)	
KNLG648, KNLG650, KNLF793,)	
WPOJ703, KNLG646, KNLG647,)	
KNLG651, KNLF892 and WPOJ690 in the)	
Personal Communications Services)	

ORDER

Adopted: December 28, 2001

Released: January 2, 2002

By the Deputy Chief, Commercial Wireless Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. On August 24, 2001, Wireless Consumers Alliance, Inc. ("Consumers Alliance") filed a self-styled Petition for Investigation ("Petition"). Consumers Alliance asks the Commission to initiate a full evidentiary investigation into the facts and circumstances surrounding the above-captioned applications ("Applications"), which seek consent to assign certain licenses in the C and F block broadband Personal Communications Services ("PCS"). Consumers Alliance alleges, in essence, that the assignees, K-25 Wireless, L.P., Y-12 Wireless, L.P. and X-10 Wireless, L.P. (collectively, "Assignees"), do not meet the Commission's eligibility criteria to acquire C and F block PCS licenses.¹ For the reasons explained below, we find that Consumers Alliance's Petition is in substance a petition to deny, which is untimely as to all but one of the Applications, and that in any event Consumers Alliance lacks standing to challenge the Applications. Additionally, as discussed below, we would deny the Petition on the merits even if it were not procedurally defective, as Consumers Alliance raises nothing that would warrant either

¹ Section 24.839(a)(2) of the Commission's rules, 47 C.F.R. § 24.839(a)(2), requires the Assignees to meet the eligibility criteria set forth in section 24.709(b), 47 C.F.R. § 24.709(b).

denying the Applications or initiating an evidentiary hearing. Accordingly, we dismiss Consumers Alliance's Petition and, subject to certain conditions set forth below,² grant consent to assign the licenses.

II. BACKGROUND

2. The Assignees all have substantively identical ownership structures. Specifically, each one is structured as a limited partnership with one general partner, which holds 15 percent of the equity interests in the partnership. Each Assignee's general partner is a corporation whose sole stockholder is Mark J. Kington ("Kington").³ Each Assignee's limited partner, which holds 85 percent of the equity interests, is USCC Wireless Investment, Inc., a wholly-owned subsidiary of United States Cellular Corporation ("USCC").⁴

3. In its Petition, Consumers Alliance alleges that the Assignees are not eligible to acquire C and F block PCS licenses under section 24.839 of the Commission's rules.⁵ On September 6, 2001, Assignees filed an Opposition to Petition for Investigation, and on September 26, 2001, Consumers Alliance filed a Reply to Opposition to Petition for Investigation ("Reply").

III. DISCUSSION

4. As an initial matter, we note that while Consumers Alliance titles its pleading a "Petition for Investigation," it is in substance a petition to deny. It would appear that Consumers Alliance adopts this strategy because, as discussed below, it missed the deadline for filing petitions to deny as to all but one of the Applications. The Commission, however, is not bound by the title that a filing party gives a pleading, particularly if, as here, the form chosen appears designed to circumvent our procedural rules.⁶ We therefore will address the Petition as a petition to deny.⁷

A. Procedural Matters

5. The Petition clearly is untimely as to all but one of the Applications. Section 1.939(a)(2) of the Commission's rules states that for non-auctionable applications, petitions to deny must be filed

² The conditions pertain to installment payments that remain due on certain of the licenses. See paragraph 20 *infra*.

³ Applications at Exhibit 1. We note that all of the Applications include substantially similar Exhibits. We note additionally that although the general partner in each Assignee is a separate corporation wholly owned by Kington, for convenience of reference in this Order, we will refer to "Kington" when discussing the Assignees' general partners.

⁴ USCC's parent corporation is Telephone and Data Systems, Inc. ("TDS"). Consumers Alliance alleges in its Petition that USCC as well as TDS have *de facto* control over the Assignees. See, e.g., Petition at 4. For convenience of reference in this Order, we will refer to "USCC" when discussing the Assignees' limited partners.

⁵ 47 C.F.R. § 24.839.

⁶ To do otherwise would be to elevate form over substance. Cf. *In re Applications of Interactive Control Two, Inc., Order on Reconsideration*, DA 01-2504, 2001 WL 1313023 (F.C.C.) (WTB rel. Oct. 26, 2001) (one entity was nominally a proposed assignor in two sets of applications, but the true parties in interest clearly were not the same; Bureau concluded that it would elevate form over substance to view the applications filed by one of the parties in interest as being filed by or on behalf of the other party in interest).

⁷ We note that Consumers Alliance cites our rule governing petitions to deny, 47 C.F.R. § 1.939, as a basis for its Petition. See Petition at 1. Even if we were to consider Consumers Alliance's pleading as a proper request for investigation under Sections 309(e) and 403 of the Communications Act of 1934, as amended ("Act"), we would not designate the Applications for a hearing. As explained below, Consumers Alliance's Petition fails to present any "material and substantial question of fact" that would warrant an investigation. See 47 U.S.C. §§ 309(e), 403.

within thirty days after the date of the public notice accepting the applications for filing.⁸ Consumers Alliance filed its Petition on August 24, 2001, well past the respective filing deadlines of July 13, 2001 and August 6, 2001 for the majority of the Applications.⁹ Moreover, Consumers Alliance does not request a waiver or an extension of the deadline for filing a petition to deny and, indeed, offers no explanation of why it was unable to file timely petitions to deny. We therefore find Consumers Alliance's Petition to be untimely as to the applications of BRK, Amica and American Wireless, and we will dismiss the Petition on that basis as it applies to those four applications.

6. Even if the Petition were timely as to all the Applications, Consumers Alliance also has failed to establish standing to challenge the Applications by demonstrating that it is a "party in interest" as required by Section 309(d)(1) of the Act.¹⁰ To establish standing, a petitioner must allege sufficient facts to demonstrate that grant of the subject application would cause the petitioner to suffer a direct injury.¹¹ The petitioner also must demonstrate a causal link between the claimed injury and the challenged action.¹²

7. Consumers Alliance, which claims to represent the interests of wireless consumers nationwide,¹³ has not set forth specific allegations of fact sufficient to show that grant of the Applications would cause it to suffer a direct injury. Consumers Alliance merely asserts that "any compromise of the eligibility rules" governing C and F block PCS licenses "harms competition in the service and thus harms the interests of wireless consumers."¹⁴ It fails to demonstrate the nature of any such alleged harm and how granting consent to these particular assignment Applications would cause such harm. Such vague and general assertions are insufficient to confer standing.¹⁵ Accordingly, we will dismiss the Petition on that basis as well.

B. The Merits of the Petition

⁸ 47 C.F.R. § 1.939(a)(2).

⁹ The applications of BRK Wireless Company, Inc. ("BRK"), File Nos. 0000479140 and 0000480125, and Amica Wireless Phone Service, Inc. ("Amica"), File No. 00000483023, were listed on the Commission's June 13, 2001 Public Notice as accepted for filing. The thirty-day filing period for petitions to deny those applications expired on July 13, 2001. The application of American Wireless License Group, LLC ("American Wireless"), File No. 0000494420, was listed on the Commission's July 5, 2001 Public Notice as accepted for filing. The thirty-day filing period for the American Wireless application expired on August 6, 2001. The Petition is timely only with respect to the Application of Minnesota PCS Limited Partnership, File No. 0000525838, which was listed on the Commission's July 25, 2001 Public Notice as accepted for filing. The thirty-day filing period for petitions to deny expired on August 26, 2001.

¹⁰ 47 U.S.C. § 309(d)(1) (providing that any "party in interest" may file a petition to deny any application). *See also* 47 C.F.R. § 24.830(a)(3) (a petition must "[c]ontain specific allegations of fact . . . sufficient to demonstrate that the petitioner . . . is a party in interest and that a grant of, or other Commission action regarding, the application would be *prima facie* inconsistent with the public interest.").

¹¹ *See In re Applications of ABC Wireless, L.L.C. and American Wireless, L.L.C.*, Order, 15 FCC Rcd 6787, ¶ 4 (1999); *In re Application of Los Angeles Cellular Telephone Co.*, Order, 13 FCC Rcd 4601, 4603-4604, ¶ 5 (1998); *In the Matter of AmericaTel Corp.*, Memorandum Opinion, Order, Authorization and Certificate, 9 FCC Rcd 3993, 3995 (1994); *Sierra Club v. Morton*, 405 U.S. 727, 733 (1972); *see also Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992) ("*Lujan*"); *Warth v. Seldin*, 422 U.S. 490, 508 (1975).

¹² *See Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 74, 81 (1978).

¹³ *See* Petition at 3; Reply at 3.

¹⁴ Petition at 3-4.

¹⁵ *See, e.g., Lujan*, 504 U.S. at 560 ("Irreducible constitutional minimum of standing requires that plaintiff have suffered an injury in fact, which is an invasion of a legally protected interest which is concrete and particularized and actual or imminent rather than conjectural or hypothetical...").

8. Even if Consumers Alliance had filed a timely petition to deny with respect to all of the Applications and had demonstrated standing to challenge the Applications, we would deny the Petition on the merits. The basis for Consumers Alliance's Petition is the claim that the Assignees do not meet the eligibility criteria as set forth in section 24.709(b) of the Commission's rules. Specifically, Consumers Alliance argues that USCC's gross revenues and assets should be attributed to Assignees because USCC is affiliated with Assignees.¹⁶ In the Petition, Consumers Alliance offers in support of that contention little more than bare assertions that because USCC holds a large amount of equity interest in Assignees, we are required by that fact alone to conclude that the Assignees do not comply with the Commission's eligibility rules. In its Reply, Consumers Alliance refers to several specific provisions in the Assignees' respective partnership agreements that it alleges remove *de facto* control from Kington,¹⁷ and makes several other general allegations concerning Kington's and the Assignees' compliance with Commission rules. Consumers Alliance's arguments in both its Petition and its Reply, to the extent that they are not based on sheer speculation, reflect a fundamental misunderstanding of the Commission's rules and precedent on controlling interests and, as explained below, neither support Consumers Alliance's assertions that Kington does not have *de facto* control over the Assignees nor raise any material and substantial question of fact that would warrant an evidentiary investigation of the Applications.¹⁸

9. Pursuant to section 24.709(b) of the Commission's rules, an applicant for C and F block PCS licenses must not exceed certain revenue caps.¹⁹ To determine whether an applicant meets the eligibility criteria, the Commission attributes to the applicant its assets and revenues and also those of its "affiliates."²⁰ Determining which entities are attributable affiliates of an applicant includes considering what entities have *de jure* (legal) or *de facto* (actual) control of the applicant.²¹ If an entity has either *de facto* or *de jure* control of an applicant, that entity is an affiliate of the applicant for purposes of our eligibility rules, and its assets and revenues will be attributed to the applicant for the purposes of

¹⁶ See Petition at 4.

¹⁷ The partnership agreements were filed (under a request for confidentiality) with the Commission for review. See Letter to Magalie Roman Salas, Secretary, from Todd Slamowitz, Esq., filed on September 14, 2001. The partnership agreements of all of the Assignees are substantively identical. Consumers Alliance also was provided with copies of the partnership agreements. See Reply at 4 n.10.

¹⁸ In its Petition, Consumers Alliance requests that the Commission, pursuant to sections 1.41 and 1.939 of the Commission's rules, 47 C.F.R. §§ 1.41, 1.939, and Sections 309(e) and 403 of the Act, 47 U.S.C. §§ 309(e), 403, initiate a full evidentiary investigation of the facts and circumstances surrounding the above-captioned applications.

¹⁹ Specifically, an applicant must demonstrate that it, together with its affiliates and persons or entities that hold interests in the applicant and their affiliates, has gross revenues for each of the past two years of less than \$125 million and total assets of less than \$500 million. 47 C.F.R. § 24.709(a)(1).

²⁰ An "affiliate" is defined as an individual or entity that "(i) directly or indirectly controls or has the power to control the applicant, or (ii) is directly or indirectly controlled by the applicant, or (iii) is directly or indirectly controlled by a third person or parties who are also controlled or have the power to control the applicant, or (iv) has an 'identity of interest' with the applicant." 47 C.F.R. § 24.720(l); see also 47 C.F.R. § 1.2110(c)(5) (same definition of affiliate).

²¹ See Application of Baker Creek Communications, L.P., *Memorandum Opinion and Order*, 13 FCC Rcd 18709, 18712, ¶ 6 (PSPWD 1998) ("*Baker Creek*") (citing Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band to Reallocate the 29.5-30.0 GHz Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, *Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking*, 12 FCC Rcd 12545, 12691-92 (1997)). Although a different affiliation rule, 47 C.F.R. § 101.1112(h), was at issue in *Baker Creek* than the one here, the wording of the two rules is the same; thus our interpretation here should be the same. Compare 47 C.F.R. § 24.720(l) with 47 C.F.R. § 101.1112(h)(1). See also In re Application of ClearComm, L.P., *Memorandum Opinion and Order*, DA 01-2421, 2001 WL 1242374 (F.C.C.) (AIAD rel. Oct. 17, 2001).

determining eligibility to hold a license.²² The existence of *de facto* control is determined on a case-by-case basis by evaluating the totality of the circumstances, including the criteria set forth in the *Ellis Thompson* order.²³

10. Consumers Alliance does not attempt to argue that Kington as general partner lacks *de jure* control over the Assignees. Consistent with general principles of agency and partnership law, our rules expressly provide that the general partner of a partnership has *de jure* control of that partnership.²⁴ Instead, Consumers Alliance alleges that Kington has not retained *de facto* control of the Assignees.

11. Consumers Alliance asserts that USCC's 85 percent limited partnership interests in the Assignees creates a "rebuttable presumption" that USCC, not Kington, has *de facto* control.²⁵ Consumers Alliance simply misstates what our controlling interest analysis requires. In the *Part One Order*, the Commission expressly declined to adopt a minimum equity requirement for the determination of controlling interests, and it stated that although lack of equity may be a factor in determining whether an entity has retained *de facto* control, it is not a dispositive one. The Commission explained that application of the principles of *de jure* and *de facto* control, irrespective of the amount of equity held, is enough to ensure appropriate identification of an applicant's controlling interests.²⁶ Consumers Alliance nonetheless insists that, on this point and others, we cannot rely upon either the information in the Applications or the provisions of the partnership agreements to evaluate *de facto* control, but that instead we are compelled to conduct an evidentiary investigation.²⁷ That insistence suggests misunderstanding of our controlling interest standard, particularly as reflected in more recent discussions such as the *Part 1 Fifth Report and Order*.²⁸ To the extent that such insistence further suggests that Consumers Alliance

²² Amendment of Part 1 of the Commission's Rules - Competitive Bidding Procedures, WT Docket No. 97-82, *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making*, 15 FCC Rcd 15293, 15323-26, ¶¶ 58-67 (2000) ("*Part 1 Fifth Report and Order*").

²³ See Implementation of Section 309(j) of The Communications Act--Competitive Bidding, *Fifth Memorandum Opinion and Order*, 10 FCC Rcd 403, 447, ¶ 80 (1994) ("*Competitive Bidding Fifth MO&O*"); *Ellis Thompson Corp., Memorandum Opinion and Order and Hearing Designation Order*, 9 FCC Rcd 7138, 7139, ¶ 10 (1994) ("*Ellis Thompson*"); *Applications of La Star Cellular Telephone Co., Memorandum Opinion and Order*, 9 FCC Rcd 7108, 7109, ¶ 13 (1994) ("*La Star*").

²⁴ See 47 C.F.R. § 1.2110(c)(2) (*de jure* control of a partnership is evidenced by holding a general partnership interest).

²⁵ See Reply at 4. Consumers Alliance erroneously asserts that *Baker Creek* stands for the proposition that when an entity holds a large amount of equity in another entity (without receiving corresponding voting rights) a presumption is created that the former has *de facto* control over the latter. Consumers Alliance misconstrues our rules, cites *Baker Creek* out of context, and ignores our adoption of new rules. The quotation that Consumers Alliance uses from *Baker Creek* was part of the discussion under *de jure* control and not *de facto* control, and was intended to prevent applicants from circumventing our ownership benchmarks (which have been lifted) through the creative use of financial instruments. See *Baker Creek*, 13 FCC Rcd at 18712 n. 26. As discussed below, the *Part 1 Fifth Report and Order* lifted the minimum equity requirement.

²⁶ See *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15324 ¶ 65 ("We do not believe that the adoption of a minimum equity requirement is necessary to ensure appropriate identification of an applicant's controlling interest if the principles of *de jure* and *de facto* control are applied. These requirements are broader than the minimum equity requirement because they look to actual control irrespective of the amount of equity held in an applicant. While we agree with commenters that lack of equity may indicate lack of *de facto* control, we are not persuaded that this factor alone is dispositive.").

²⁷ See, e.g., Petition at 5. Consumers Alliance also contends, for example, that because the information that Assignees submit in the Applications has a "self-serving" character and that since the Commission has no "record of past conduct," it should not accept the Assignees' representations that Kington is in control.

²⁸ 15 FCC Rcd at 15293.

disagrees with the Commission's eligibility rules for C and F block licensees and designated entity status, Consumers Alliance's Petition is an untimely collateral attack on prior rulemakings, and to that extent we would not need to address the Petition's arguments.²⁹

12. Consumers Alliance also claims that certain contractual provisions in the Assignees' partnership agreements confer *de facto* control on USCC. Specifically, Consumers Alliance argues that Kington's put rights (rights to require USCC to buy out the general partner in certain circumstances), combined with USCC's right of first refusal if Kington wishes to sell the general partnership interest to a third party and USCC's veto powers over certain extraordinary expenditures, rise to the level of *de facto* control. We disagree. Put options held by the controlling interest holder under our eligibility rules and rights of first refusal held by the non-controlling interest holder are not *per se* prohibited as long as they leave the ownership decision in the controlling interest holder and do not force an unwanted sale upon that entity.³⁰ Similarly, the question of who has control over the finances of the applicant³¹ has a bearing in our determination of whether the controlling interest holder has retained *de facto* control. However, ordinary commercial covenants that are reasonably designed to protect a lender or investor, such as a limited partner's right to prevent significant non-budgeted or extraordinary expenditures without its prior consent, ordinarily do not raise questions as to *de facto* control.³² Based on the totality of the circumstances in this instance, we conclude that the contract provisions cited by Consumers Alliance – Kington's put rights, USCC's right of first refusal and USCC's right to veto extraordinary expenditure – do not deprive Kington of *de facto* control of Assignees, either singly or in combination with the Assignee's equity arrangements. The types of provisions cited by Consumers Alliance were contemplated by the Commission when formulating the applicable rules,³³ and we conclude that their particular formulations in this case, on balance and considering the Assignees' particular structures and operating arrangements as a whole, do not raise any *de facto* control concerns that would warrant either denying the Applications or initiating an evidentiary investigation.

13. Consumers Alliance, particularly in its Reply, makes a number of other general allegations, none of which would have sufficient merit to require extensive consideration.³⁴ For example, Consumers Alliance claims that Kington as general partner is not subject to any financial risk, allegedly making his interest more akin to a limited partnership interest, and that he only receives a nominal compensation for his performance as general partner.³⁵ The partnership agreements provide that the general partner of each Assignee will receive distributions in proportion to its interest in the partnership, and Kington receives compensation under each partnership agreement, not just the one cited in the Reply.³⁶ Consumers Alliance also contends that Kington is a venture capitalist with no "hands on"

²⁹ See TPS Utilicom, Inc., *Order*, DA 01-1833 (CWD Policy & Rules Br. rel. July 31, 2001)(complaints should have been raised during pendency of rulemaking proceeding).

³⁰ See *Competitive Bidding Fifth MO&O*, 10 FCC Rcd at 455, ¶95.

³¹ See *Ellis Thompson*, 9 FCC Rcd at 7138.

³² See *Competitive Bidding Fifth MO&O*, 10 FCC Rcd at 447, ¶ 81 (providing that "non voting shareholders may be given a decision making role (through supermajority provisions or similar mechanisms) in major corporate decisions that affect their interest as shareholders without being deemed to be in *de facto* control").

³³ See, e.g., *id.*

³⁴ To the extent that this Order does not expressly discuss an argument made by Consumers Alliance, we nonetheless have considered it and concluded that it, like the other arguments in the Petition and Reply, would not support either denying the Applications or setting them for investigation.

³⁵ See Reply at 5-6.

³⁶ See *id.*

operational experience, which allegedly renders him incapable of controlling the Assignees. This contention is sheer speculation and provides no basis for denying or investigating the Applications.³⁷

14. Consumers Alliance also contends, citing one case, *La Star*,³⁸ that the “Commission may not blind itself to the fact that USCC has a history of improperly asserting actual control of a licensee in an attempt to circumvent the Commission’s rules governing eligible licensees.”³⁹ Contrary to the arguments of Consumers Alliance, however, that case neither requires that any application in which USCC is involved in some capacity be examined more closely than other applications nor establishes a presumption that USCC might attempt to circumvent our rules in this or any other case. The Commission in that order dismissed the *La Star* application and found that *La Star* was ineligible to operate a system in that particular market, after determining, on the particular facts of that case, that USCC, which did not meet the eligibility requirements for that particular market, controlled *La Star*. The *La Star* order, however, in no way supports denying or investigating every application that includes USCC as a non-controlling interest holder.

15. Finally, Consumers Alliance contends that the Applications “evinced a highly selective and flawed notion of the controlling interest standard” and that the Commission therefore must infer that Kington may not be revealing all the entities with which he is affiliated. Further, Consumers Alliance suggests that the method used to calculate the Assignees’ gross revenues might be flawed as well. Consequently, the Commission should similarly designate for investigation and evidentiary hearing the issue of whether Kington is eligible to hold the licenses.⁴⁰ This contention is sheer speculation and is without support.⁴¹

16. As discussed above, the Consumers Alliance Petition is procedurally defective. Moreover, even if we were to entertain the Petition on the merits, we would not be persuaded by any of the arguments either to deny the Applications or initiate an evidentiary hearing concerning them. Having considered the Petition and reviewed the Applications, including the partnership agreements submitted by the Assignees, we conclude that it would serve the public interest, convenience and necessity to grant consent to the Applications.⁴²

IV. ORDERING CLAUSES

17. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 309(d)(2) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309(d)(2), and section 0.331 of the Commission's rules, 47 C.F.R. § 0.331, the Petition for Investigation filed by Wireless Consumers Alliance, Inc. on August 24, 2001, IS HEREBY DISMISSED.

³⁷ See *In re Application of Continental Satellite Corp.*, *Memorandum Opinion and Order*, 10 FCC Rcd 10473 (IB 1995).

³⁸ *La Star*, 9 FCC Rcd at 7108.

³⁹ Reply at 7.

⁴⁰ See Reply at 7-8.

⁴¹ See *In re Application of Continental Satellite Corp.*, *Memorandum Opinion and Order*, 10 FCC Rcd 10473 (IB 1995).

⁴² We note that, as permitted by section 1.1102 (b) of the Commission’s rules, 47 C.F.R. § 1.102 (b), we will make this Order effective as of the date of adoption, solely for the purpose of enabling the parties to complete certain transactions in connection with the Applications by the calendar year-end. We caution that we do not intend this action with respect to the effective date of this Order to be regarded as precedent for future proceedings.

18. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 309(d)(2) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309(d)(2), and sections 0.331, 24.830, and 24.839 of the Commission's rules, 47 C.F.R. §§ 0.331, 24.830, 24.839, consent for the assignment applications filed respectively by Minnesota PCS Limited Partnership on June 28, 2001, BRK Wireless Company, Inc. on July 13, 2001, Amica Wireless Phone Service, Inc., on July 11, 2001, American Wireless License Group, LLC, in the above-captioned proceeding is HEREBY GRANTED subject to the conditions listed below.

19. IT IS FURTHER ORDERED that, pursuant to section 1.102(b) of the Commission's rules, 47 C.F.R. § 1.102(b), the effective date of this Order shall be December 28, 2001, the date of adoption.

20. IT IS FURTHER ORDERED that, pursuant to Section 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. § 310(d), and section 0.331 of the Commission's rules, 47 C.F.R. § 0.331, the consent for the assignment of the licenses held by Minnesota PCS Limited Partnership, BRK Wireless Company, Inc. and Amica Wireless Phone Service, Inc. granted herein are conditioned upon the execution by the assignees, assignors, and the Commission of all Commission loan documents, unless the licenses being assigned have been paid in full. Furthermore, unless the licenses being assigned have been paid in full, this approval is conditioned upon execution of the applicable financing statements (i.e., the UCC-1 Forms) and payment, on or before the consummation date, of all costs associated with the preparation and recordation of the financing statements. The assignee will also provide the Commission with its most current filed charter documents and applicable organization identification number on or before the consummation date. Where applicable, the Bureau will send the appropriate assignors listed herein the loan documents and financing statements upon notification of the proposed consummation date. Additionally, all installment payments must be current on the consummation date. Upon receipt of the letter required by Section 1.948(d) of the Commission's rules, and satisfaction of all requisite conditions, including execution of the appropriate documents, the Bureau will consider the assignment "complete" and will issue the license to the assignee with the date of the license grant identical to the date upon which the transaction closed, thus completing the assignment. Failure of the parties to comply with any of the financial obligations described above will result in automatic cancellation of the Commission's approval hereunder and in dismissal of the relevant assignment or transfer of control applications.

FEDERAL COMMUNICATIONS COMMISSION

Katherine M. Harris
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Wireless Telecommunications Bureau